UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGEL DELEON, Plaintiff, -against- R.D. RICE CONSTRUCTION, INC.; EMPIRE ERECTORS AND ELECTRICAL CO., INC.; THE PADDED WAGON, INC.; and RIGGED RITE, INC.; Defendants.	08 CV 2517 Case No.: NOTICE OF REMOVAL JUDGE SCHEINDLIN MAR 13 2008 U.S.D.C. S.D. N.Y. CASHIERS

PLEASE TAKE NOTICE:

DEFENDANTS THE PADDED WAGON, INC., ("The Padded Wagon"), and RIGGED RITE, INC., ("Rigged Rite"), by and through their attorneys in this action, Goldberg & Associates, pursuant to 28 U.S.C. § 1332, 1441 and 1446, and with the written consent of all other parties to this action, hereby remove the above-captioned action from the Supreme Court of the State of New York, County of Bronx, where it is pending under the Index No. 13662/06, to the United States District Court for the Southern District of New York. In support thereof, defendants show as follows:

1. The undersigned is an attorney admitted to practice before the Courts of the State of New York and this honorable court, who is associated with the law firm Goldberg & Associates, attorneys for defendants The Padded Wagon and Rigged Rite in this action.

NATURE OF ACTION AND PERTINENT PROCEDURAL HISTORY

2. The instant action arises out of injuries allegedly sustained by plaintiff ANGEL DeLEON ("DeLeon") at a work site located at 521 West 23rd Street, New York, on February 9, 2006. In

particular, DeLeon claims that negligence by one or more of the named defendants was the proximate cause of an accident that resulted in amputation of the tip of his left index finger.

3. Plaintiff originally commenced the instant action by means of purchasing in index number and filing a summons and complaint on or about __. In his pleadings, plaintiff alleged that his residence at the time the action was commenced was in the State of New York. A true copy of plaintiff's summons and verified complaint is annexed hereto as Exhibit "A".

4. The Padded Wagon and Rigged Rite each joined issue by service of an answer to the Verified Complaint on June 26, 2006. Co-defendants R.D. RICE CONSTRUCTION, INC., ("R.D. Rice") and EMPIRE ERECTORS AND ELECTRICAL CO., INC., ("Empire"), also appeared by counsel and served answers.

5. Thereafter, R.D. Rice commenced a third-party action by which it impleaded numerous additional parties. Pursuant to an Order dated June 22, 2007, a true copy of which is annexed hereto as Exhibit "B", the third-party action was severed from the underlying personal-injury action, but remains pending. In the interim, on or about August 4, 2006, plaintiff served a Response to Demand for Ad Damnum, a true copy of which is annexed hereto as Exhibit "C". On or about August 8, 2006, plaintiff served a Verified Bill of Particulars, a true copy of which is annexed hereto as Exhibit "D", pursuant to which plaintiff amplified and supplemented the allegations set forth in his original complaint.

6. On March 6, 2008, plaintiff's examination before trial began. DeLeon's deposition continued through March 7 without being completed. There have been no further proceedings.

BASIS FOR REMOVAL

7. Plaintiff's Complaint and Verified Bill of Particulars allege that plaintiff resided in the State of New York at the time this action was commenced and/or by the date of service of these papers.

Notwithstanding verification of these allegations by plaintiff's counsel, DeLeon revealed during the course of his deposition that he had relocated from New York to North Carolina prior to commencement of the instant action. In particular, DeLeon testified that: (a) he had already obtained a North Carolina driver's license prior to February 9, 2006; (b) his wife had moved from New York to North Carolina; and (c) although he was staying with his mother in her apartment in Brooklyn on the date of the accident giving rise to this action, he and his wife had already obtained a residence in North Carolina.

8. DeLeon's actual sworn testimony therefore eliminates any legitimate question that notwithstanding the formal pleadings served by his counsel in this matter, DeLeon had already become a domiciliary of the State of North Carolina prior to the date this action was commenced. DeLeon's testimony also reveals that this fact was concealed from defendants throughout the course of this litigation thus far.

9. By contrast, defendants in this matter are all domiciliaries of the State of New York. Specifically:

a. The Padded Wagon, Inc., is a domestic business corporation organized and existing pursuant to the law of the State of New York with its principal place of business located in the County of New York;

b. Rigged Rite, Inc., is a domestic business corporation organized and existing pursuant to the law of the State of New York with its principal place of business located in the County of Bronx;

c. R.D.Rice Construction, Inc., is a corporation organized and existing pursuant to the law of the State of New York with its principal place of business located in the County of New York; and

d. Empire Erectors and Electrical Co., Inc., is a domestic business corporation organized and existing pursuant to the law of the State of New York with its principal place of business located in the County of Bronx.

10. Thus, notwithstanding plaintiff's counsel's inadvertent but repeated material misrepresentation of plaintiff's place of residence and domicile, DeLeon's actual testimony under oath confirms that he had permanently relocated and intended to remain in North Carolina by the time this action was commenced. Of note, to obtain a North Carolina driver's license, plaintiff necessarily had to surrender his New York license and, upon information and belief, submit proof of residency to the North Carolina Division of Motor Vehicles.

11. Plaintiff's original complaint fails to set forth a monetary value for his injuries. Plaintiff's counsel has, however, verbally communicated a demand for $750,000. In the Verified Bill of Particulars, plaintiff enumerates his injuries as follows:

> **AMPUTATION OF DISTAL TIP OF LEFT INDEX FINGER**
> Active bleeding at wound site;
> Pain radiating up the entire left arm and throughout entire left hand;
>
> Plaintiff [was] required to undergo surgery to the left index finger on 2/16/06, wherein the following was performed;
>
> **COMPLETION AMPUTATION OF LEFT INDEX FINGER;**
>
> Permanent scar of left hand at site of index finger amputation;
> Feelings of inadequacy, embarrassment, self-consciousness;
> Permanent loss of power, strength, grasp, grip and dexterity of left hand;
> Permanent severe disfigurement and deformity of left hand;
> Permanent disability and restricted use, motion and function of the left hand;
> Plaintiff may require additional surgery to left hand.
>
> All with pain, tenderness, stiffness, soreness, spasm, swelling, weakness, limitation of motion, restriction of use, impairment of function, exacerbation of pain on motion, with damage to the underlying muscles, tendons, ligaments, fascia, blood vessels, capillaries and nerves in and about all of the above injury sites, with resultant disfigurement, deformity and disability.
>
> The aforementioned injuries resulted in shock to the body and nervous system, produced functional and organic disturbances, sympathetic and radiating to and about the adjacent and surrounding areas, as well as tissue damages.

> Mental and emotional overlay as a result of the trauma and the aforesaid injuries, accompanied by anxiety, irritability, depression, aggravation and associated and concomitant impairment and negative effects on plaintiff's preaccident enjoyment of life, day to day existence, activities, function and involvements.
>
> The injuries, manifestations and sequelae are permanent, chronic and progressive in nature and that as a result thereof, plaintiff will have permanent pain, tenderness, stiffness, soreness, irritation, discomfort, limitation of motion, limitation and loss of function, power and use and additionally, with advancing years, there will be naturally and medically related complications and exacerbations.
>
> As a result, plaintiff's quality of life has been severely compromised. Plaintiff cannot return to nor is it expected that plaintiff will ever be able to return to, a level of function consistent with plaintiff's abilities prior to the accident, and plaintiff has and will continue to sustain impairment, impediment, diminution and retardation of enjoyment of life.
>
> Upon information and belief, all of the aforementioned injuries are permanent and lasting in their nature and character, except those of a superficial nature.

See Exhibit "C" at ¶ 6.

12. Plaintiff furthermore underwent a second surgical procedure on February 9, 2007, a development not yet formally disclosed by plaintiff's counsel during the course of discovery which defendants learned about by means of records acquired via authorizations.

13. Defendants expressly reserve their right to contest all issues of damages and liability in this matter. However, a reasonable reading of the claims plaintiff has asserted, together with plaintiff's formal demand for $2,000,000 in compensatory damages, demonstrates that the amount in controversy exceeds the minimum jurisdictional of $75,000. *E.g.*, *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977); *United Food & Commercial Workers Union v. CenterMark Properties Meriden Square, Inc.*, 30 F.3d 298, 303-04 (2d Cir. 1994) (preponderance of evidence sufficient to establish reasonable probability that jurisdictional minimum has been satisfied); *Harries v. Caterpillar, Inc.*, 2007 U.S. Dist. LEXIS 66408, 3-4 (E.D.N.Y. Sep. 7, 2007) (noting that formal response to demand

for *ad damnum* pursuant to CPLR 3017 of amount in excess of $75,000 would satisfy amount in controversy requirement).

14. Given DeLeon's testimony under oath that he had become a North Carolina citizen prior to commencement of this action, and the above proof that the amount in controversy exceeds $75,000, this Court is vested with subject-matter jurisdiction of this action pursuant to 28 U.S.C. 1332(a), and this action may be removed to this Court pursuant to 28 U.S.C. § 1441. Annexed hereto as Exhibit "E" is written consent to removal of this action executed by counsel for all defendants herein.

15. Notwithstanding the amount of time that has passed between the date of commencement and the present, removal of this matter remains timely. At the outset, the case stated by plaintiff's initial pleading was rendered unremovable by plaintiff's counsel through the simple expedient of misrepresenting plaintiff's true domicile. Plaintiff's answers to questions regarding his residency during the course of his deposition on March 6 and March 7, 2008, constituted a "paper" within the meaning of the removal statute. *Dell'Aera v. Home Depot, U.S.A., Inc.*, 2007 U.S. Dist. LEXIS 50815, 7-8 (D. Conn. 2007) (federal courts may look outside pleadings to other evidence in the record to confirm removability of action); *Fisher v. Untied Airlines, Inc.*, 218 F.Supp. 223 (S.D.N.Y. 1963) (answers to deposition questions can constitute "other paper" for purposes of accrual of duty to seek removal).

16. Thus, the thirty (30) day deadline for seeking removal of this action did not start to run until defendants came into possession of proof that diversity of citizenship exists in this matter, and plaintiff's earlier formal allegations were, in fact, misrepresentations. *E.g.*, *Soto v. Apple Towing*, 111 F.Supp.2d 222 (E.D.N.Y. 2000) (citing *Fisher* with approval for proposition that pleadings which do not reveal a basis for removal fail to impose a duty of investigation on defendants who later seek removal, and deadline begins to run upon receipt by defendants of information sufficient to ascertain basis for removal). *See also*

Carter v. Frito-Lay, Inc., 2005 U.S. App. LEXIS 17007 (11th Cir. 2005) (one-year deadline for removal of action based on diversity of citizenship inapplicable to action which was removable at the time it was originally commenced but where removability could not be ascertained from the pleadings).

17. Under New York law, plaintiff's misrepresentation of his true citizenship tolls any otherwise applicable procedural deadlines for removal. It is well established that he doctrines of equitable tolling or equitable estoppel "may be invoked to defeat a [procedural deadline such as a] statute of limitations defense when the plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action.'" *Abbas v. Dixon*, 480 F.3d 636 (2nd Cir. 2007) (quoting *Doe v. Holy See (State of Vatican City)*, 17 A.D.3d 793, 793 N.Y.S.2d 565, 568 (3d Dep't 2005). As the Second Circuit has noted:

> The elements of estoppel are with respect to the party estopped: (1) conduct which amounts to a false representation or concealment of material facts; (2) intention that such conduct will be acted upon by the other party; and (3) knowledge of the real facts. The party asserting estoppel must show with respect to [it]self: (1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in [its] position . . . .

Smith v. Smith, 830 F.2d 11, 12 (2d Cir. 1987).

18. Here, plaintiff was under a legal obligation to truthfully set forth his true place of citizenship in his initial verified pleadings and subsequent verified bill of particulars. Nonetheless, it was not until plaintiff was called upon to testify under penalty of perjury that he revealed that he had permanently relocated from New York to North Carolina prior to commencement of the instant action.

19. Accordingly, this Notice of Removal is being filed with the within Court in a timely fashion. Pursuant to 28 U.S.C. § 1446(d), defendants will provide written notice to plaintiff's counsel and all other

interested parties and thereafter file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Bronx.

WHEREFORE, defendants respectfully request that the above-captioned action, presently assigned New York State Supreme Court, Bronx County, Index Number 13662/2006, be removed from the Supreme Court of the State of New York, County of Bronx, that the Clerk of said State Court be directed to transfer and furnish the complete file maintained by said State Court to the within Court, and that the Court grant such other, further and different relief as the Court deems just and proper.

Dated: New York, NY
March 12, 2008

GOLDBERG & ASSOCIATES
By: ______________________
William H. Grae, Esq.
Attorneys for Defendants
THE PADDED WAGON, INC., and RIGGED RITE, INC.
39 Broadway, 17th Floor
New York, NY 10006
(212) 968-2300

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

ANGEL DELEON, Plaintiff, - against - R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC., and RIGGED RITE INC.,	Date Filed: 4-4-06 Index No.: 13662-2006 **SUMMONS** Plaintiff designates Bronx County as the Place of Trial The basis of venue is Defendant's principal place of business.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this Action and to serve a copy of your Answer on Plaintiff's attorneys within 20 (twenty) days after the service of this Summons, exclusive of the day of service of this Summons, or within 30 (thirty) days after service of this Summons is complete if this Summons is not personally delivered to you within the State of New York.

In case of your failure to Answer this Summons within the time prescribed by law, a Judgment by Default will be taken against you for the relief demanded in the Complaint, together with the costs of this action.

Dated: New York, New York
March 31, 2006

GERSOWITZ, LIBO & KOREK, P.C.

ANDREW L. LIBO
Attorneys for Plaintiff, ANGEL DELEON
111 Broadway, 12th Floor
New York, New York 10006
Tel: 212-385-4410

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COUNTY CLERK BRONX COUNTY
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TO:

R.D. RICE CONSTRUCTION, INC.
532 West 30th Street
New York, NY 10001

EMPIRE ERECTORS and ELECTRICAL CO., INC.
102 Bruckner Boulevard
Bronx, NY 10454

THE PADDED WAGON, INC.
163 Exterior Street
Bronx, NY 10451

RIGGED RITE INC.,
163 Exterior Street
Bronx, NY 10451

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

---X

ANGEL DELEON,

Plaintiff,

- against -

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC., and RIGGED RITE INC.,

---X

Index No.: 13662-2006

VERIFIED COMPLAINT

Plaintiff ANGEL DELEON, by his attorneys GERSOWITZ, LIBO & KOREK, P.C., as and for his Verified Complaint, alleges the following upon information and belief that:

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION
Labor Law § 240

1. At all times hereinafter mentioned, Plaintiff, ANGEL DELEON, was and still is a resident of the County of Kings, City and State of New York.

2. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., was and still is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

3. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., was and still is a foreign corporation authorized to do business in the State of New York.

4. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., was and still is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

5. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., was and still is a foreign corporation authorized to do business in the

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State of New York.

6. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was and still is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

7. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was and still is a foreign corporation authorized to do business in the State of New York.

8. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was and still is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

9. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was and still is a foreign corporation authorized to do business in the State of New York.

10. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC. was the general contractor performing certain construction and renovation work at the building and premises known as 521 West 23rd Street, in the County, City and State of New York.

11. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., operated the aforementioned building and premises.

12. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., managed the aforementioned building and premises.

13. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., maintained the aforementioned building and premises.

14. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., controlled the aforementioned building and premises.

15. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., inspected the aforementioned building and premises on a regular basis.

16. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., visited the aforementioned building and premises on a regular basis.

17. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., was hired to perform certain construction and renovation work at the aforementioned premises.

18. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to written contract to perform work at the aforementioned premises.

19. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to oral agreement to perform work at the aforementioned premises.

20. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., procured a certain crane for use at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

21. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., procured a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

22. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., leased a certain crane for at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

23. At all times hereinafter mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., leased a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

24. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., procured a certain crane for use at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

25. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., procured a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

26. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., leased a certain crane for at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

27. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., leased a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

28. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., procured a certain crane for use at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

29. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., procured a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

30. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC.,

leased a certain crane for at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

31. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., leased a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

32. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., procured a certain crane for use at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

33. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., procured a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

34. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., leased a certain crane for at the aforementioned premises for purposes relating to construction, remodeling, renovation, maintenance, and other uses.

35. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., leased a certain crane for use at the aforementioned premises for purposes relating to delivery of materials.

36. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., owned a certain crane.

37. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., owned a certain crane which was utilized to move loads at the aforementioned premises.

38. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., owned a certain crane which was utilized to move loads, including loads

of glass and other construction materials, at the aforementioned premises.

39. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., operated the aforementioned crane at the aforementioned premises.

40. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., managed the aforementioned crane at the aforementioned premises.

41. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., maintained the aforementioned crane at the aforementioned premises.

42. At all times hereinafter mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., controlled the aforementioned crane at the aforementioned premises.

43. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to written contract.

44. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to oral agreement.

45. At all times hereinafter mentioned, Defendant THE PADDED WAGON, INC., was hired by Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., pursuant to written contract.

46. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was hired by Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., pursuant to oral agreement.

47. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., was hired to deliver glass to the aforementioned premises.

48. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC.,

operated the aforementioned crane at the aforementioned premises.

49. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., managed the aforementioned crane at the aforementioned premises.

50. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., maintained the aforementioned crane at the aforementioned premises.

51. At all times hereinafter mentioned, Defendant, THE PADDED WAGON, INC., controlled the aforementioned crane at the aforementioned premises.

52. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to written contract.

53. At all times hereinafter mentioned, Defendant, RIGGED RITE INC. was hired by Defendant, R.D. RICE CONSTRUCTION, INC., pursuant to oral agreement.

54. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was hired by Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., pursuant to oral agreement.

55. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was hired by Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., pursuant to a written agreement.

56. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., was hired to deliver glass to the aforementioned premises.

57. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., operated the aforementioned crane at he aforementioned premises.

58. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., managed the aforementioned crane at the aforementioned premises.

59. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., maintained the

aforementioned crane at the aforementioned premises.

60. At all times hereinafter mentioned, Defendant, RIGGED RITE INC., controlled the aforementioned crane at the aforementioned premises.

61. At all times hereinafter mentioned, RG Glass Creations, Inc. was hired as a subcontractor to perform certain work, labor, and services as to the erection and construction of the aforementioned building and premises and its interior.

62. At all times herein mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., retained the authority to modify construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

63. At all times herein mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., retained the authority to correct unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

64. At all times herein mentioned, Defendant, R.D. RICE CONSTRUCTION, INC., retained the authority to avoid unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

65. At all times herein mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., retained the authority to modify construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

66. At all times herein mentioned, Defendant, EMPIRE ERECTORS AND ELECTRICAL CO., INC., retained the authority to correct unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

67. At all times herein mentioned, Defendant, EMPIRE ERECTORS AND

ELECTRICAL CO., INC., retained the authority to avoid unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

68. At all times herein mentioned, Defendant, THE PADDED WAGON, INC., retained the authority to modify construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

69. At all times herein mentioned, Defendant, THE PADDED WAGON, INC., retained the authority to correct unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

70. At all times herein mentioned, Defendant, RIGGED RITE INC., retained the authority to avoid unsafe construction, renovation, remodeling, and alteration work concerning the aforementioned building and premises.

71. At all times hereinafter mentioned, Plaintiff, ANGEL DELEON, was employed by RG Glass Creations, Inc.

72. At all times hereinafter mentioned, Plaintiff, ANGEL DELEON, was employed by RG Glass Creations, Inc., to perform certain glass work at the aforementioned building and premises.

73. At all times hereinafter mentioned, Plaintiff, ANGEL DELEON, was hired by RG Glass Creations, Inc.

74. At all times hereinafter mentioned, Plaintiff, ANGEL DELEON, was hired by RG Glass Creations, Inc., to perform certain glass work at the aforementioned building and premises.

75. On February 9, 2006, at or about 4:15 p.m., Plaintiff, ANGEL DELEON, was lawfully at and about Defendants' aforedescribed premises and, more particularly, on or about the fourth floor located thereat.

76. On the aforementioned date and time, Plaintiff, ANGEL DELEON, was present inside the building premises as aforedescribed.

77. On the aforementioned date, time and place, Plaintiff, ANGEL DELEON, was engaged in certain work and labor inside the building premises as aforedescribed.

78. On the aforementioned date, time and place, Plaintiff,ANGEL DELEON, was engaged in altering the building premises as aforedescribed.

79. On the aforementioned date, time and place, Plaintiff, ANGEL DELEON, was engaged in the erection and construction of the building premises as aforedescribed.

80. Plaintiff was engaged in the aforedescribed labor at an elevated height.

81. In the course of performing the aforedescribed labor, Plaintiff was exposed to objects, loads, and other materials in the process of being hoisted.

82. In the course of performing the aforedescribed labor, Plaintiff was exposed to objects, loads, and other materials in the process of being hoisted by the aforementioned crane.

83. In the course of performing the aforedescribed labor, Plaintiff was exposed to objects, loads, and other materials in the process of being hoisted by the aforementioned crane and delivered into the aforementioned building and premises through one or more of its upper story windows.

84. On the aforementioned date, time and place, Defendants, their agents, servants, employees, and/or contractors were under a duty to furnish or erect or or use, or cause to be furnished or erected or used for the performance of Plaintiff's labor, rigging lines, guide-ropes, hand signals, radio signals, safety lines, safety harnesses, gloves, hard hats, restraining lines, and other devices to be so constructed, placed and operated as to give Plaintiff proper protection in the performance of his labor.

85. On the aforementioned date, time and place, Defendants, their agents, servants, employees, and/or contractors failed to furnish or erect or use, or cause to be furnished or erected or used, for the performance of Plaintiff's labor, any adequate safety devices and/or safety measures that were so constructed, placed and operated so as to give Plaintiff proper protection in the performance of his labor.

86. On the aforementioned date, time and place, Defendants, their agents, servants, employees, and/or contractors failed to use and/or to adequately maintain and/or to alter the premises in such a manner as to render said premises reasonably safe for the performance of Plaintiff's labor.

87. On the aforementioned date, time, and place, Defendants had rendered the aforedescribed premises defective, hazardous, and dangerous for the work performed by Plaintiff.

88. On the aforementioned date, time, and place, Defendants through affirmative acts had rendered the aforedescribed premises defective, hazardous, and dangerous for the work performed by Plaintiff.

89. At the aforementioned time and place, while performing work on the fourth floor, Plaintiff, ANGEL DELEON, was seriously injured.

90. At the aforementioned time and place, while performing work on the fourth floor, Plaintiff, ANGEL DELEON, was seriously injured when a load of glass, being moved by the aforementioned crane, was dropped on Plaintiff's left hand severing the top portion of his left index finger.

91. The negligence, recklessness, and carelessness of Defendants herein, their agents, servants, and/or employees consisted of: failing to furnish Plaintiff herein with a safe place to work; failing to furnish or erect for Plaintiff or cause to be furnished or erected for Plaintiff proper

scaffolding, rigging lines, restraining lines, guide-ropes, and/or other protective devices so constructed, placed and operated so as to give proper protection to Plaintiff herein; employing a defective, dangerous, unsafe and hazardous crane for use by Plaintiff and/or others when said crane was unfit for its intended use; being statutorily liable to Plaintiff in that Defendants, their agents, servants, employees and/or contractees failed to furnish Plaintiff with a safe place to work; failed and neglected to furnish Plaintiff with adequate safety devices for the movement and hoisting of loads at a height; failed to properly secure the loads being hoisted; failing to failing to properly construct, shore, equip, guard, arrange, operate, and conduct the area where Plaintiff was engaged in labor as herein set forth so as to provide reasonable and adequate protection and safety to Plaintiff; failing to properly maintain the premises in which Plaintiff was engaged in labor so as to provide reasonable and adequate protection and safety to Plaintiff; failing to properly maintain sightlines between the area in which Plaintiff was engaged in labor and the crane operator so as to provide reasonable and adequate protection and safety to Plaintiff; failing to properly maintain sightlines between the area in which Plaintiff was engaged in labor and the crane operator so as to provide reasonable and adequate protection and safety to Plaintiff, including Defendants' failure to ensure that said sightlines afforded a clean line of vision between the crane operator, the signal man, and the workers handling the delivery of the load into the subject building; failing to properly maintain the premises in which Plaintiff was engaged in labor so as to provide reasonable and adequate protection and safety to Plaintiff; failing to properly maintain the premises in which Plaintiff was engaged in labor so as to provide reasonable and adequate protection and safety to Plaintiff, including Defendants' failure to ensure that said premises were fit for the delivery of hoisted loads; failing to use hand signals to instruct the crane operator; failing to use radio communications to instruct the crane operator; failing to properly train employees; failing to properly train employees as to the safe and proper manner for the delivery of hoisted loads; failing to properly train employees as to the safe and proper manner for the release of hoisted loads; failing to properly train employees in the use of hand signals for communicating with the aforementioned crane; failing to otherwise ensure the safety of Plaintiff and others similarly situated; failing to furnish Plaintiff with a safe place to work; failing and neglecting to furnish Plaintiff with adequate safety devices; failing to properly operate, manage and control the aforesaid crane on said premises; failing to comply with applicable statutory and regulatory requirements intended to provide reasonable and adequate protection and safety to persons employed at and/or working at the aforementioned premises, including Defendants' violations of Labor Law § 241(6) and the Industrial Code of the State of New York, Title 12 N.Y. Admin. Code Part 23 and 2 N.Y.C.R.R. § 3-02(j)(16)(viii) & § 3-02(j)(20)(i), 23 N.Y.C.R.R. §§ 8.1(f)(2)(i) & 8.1.(f)(5), 12 N.Y.C.R.R. § 23- 1.7(b)1(i), 12 N.Y.C.R.R. §§ 23-1.7(e)(1) and (2); violating the New York City Administrative Code, 27 N.Y.C. Admin. Code R.S.19, §22.2.1, & 27 N.Y.C. Admin. Code R.S.19, §22.2.2, and further including Defendants' violations as to additional applicable Statutes, Codes, Rules, and Regulations; violating the laws, rules and regulations of the State of New York, including, but not limited to, violations of New York State Labor Law § 240; and, in other ways, Defendants, herein, their agents, servants, employees and/or contractees were negligent, reckless, and careless.

92. The aforementioned occurrence was caused solely by the negligence of the Defendants, their agents, servants and/or employees, without any negligence on the part of the Plaintiff contributing thereto.

93. Solely by reason of the aforementioned negligence, recklessness, and carelessness of the Defendants, their agents, servants and/or employees, as aforesaid, Plaintiff, ANGEL DELEON

became sick sore, lame, bruised and disabled, and further received serious permanent and severe injuries in and about diverse parts of his person, including, but not limited to, injuries to his left hand and left index finger. In addition thereto, Plaintiff, ANGEL DELEON, was caused to undergo medical and hospital care and treatment and has undergone, and will in the future require, a long recuperative period in the care and treatment of his injuries. These injuries are claimed to be permanent. In addition, Plaintiff, ANGEL DELEON, will require in the future additional medical care of physicians; hence additional medical and other expenses will be incurred in the future.

94. This action falls within one or more of the exceptions set forth in N.Y. C.P.L.R. § 1602, including N.Y. C.P.L.R. § 1602(7), N.Y. C.P.L.R. § 1602(8), N.Y. C.P.L.R. § 1602(11).

95. Solely by reason of the foregoing, Plaintiff has been damaged in a sum which exceeds the threshold limits required for federal diversity jurisdiction, and said sum of damages further exceeds the jurisdictional limits of all lower state courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION
Labor Law § 241(6)

96. Plaintiff, ANGEL DELEON, repeats and reiterates each and every allegation of the within Complaint as contained in foregoing paragraphs enumerated "1" through "95", inclusive, with the same force and effect as if more fully set out herein at length.

97. Defendants are statutorily liable to Plaintiff due to the aforementioned acts of negligence, recklessness, and carelessness, as well as for Defendants' further failure in not complying with applicable statutory and regulatory requirements intended to provide reasonable and adequate protection and safety to persons employed at and/or working at the aforementioned premises, including Defendants' violations of Labor Law § 241(6) and the Industrial Code of the

State of New York, Title 12 N.Y. Admin. Code Part 23 and 2 N.Y.C.R.R. § 3-02(j)(16)(viii) & § 3-02(j)(20)(I), 23 N.Y.C.R.R. §§ 8.1(f)(2)(i) & 8.1.(f)(5), 12 N.Y.C.R.R. § 23- 1.7(b)1(i), 12 N.Y.C.R.R. §§ 23-1.7(e)(l) and (2), and in violating the New York City Administrative Code, 27 N.Y.C. Admin. Code R.S.19, §22.2.1, & 27 N.Y.C. Admin. Code R.S.19, §22.2.2, and further including Defendants' violations as to additional applicable Statutes, Codes, Rules, and Regulations; and in other manners, ways and respects, Defendants, herein, their agents, servants, employees and/or contractees were negligent, reckless and careless in the premises.

98. Solely by reason of the aforementioned negligence, recklessness, and carelessness of the Defendants, their agents, servants and/or employees, as aforesaid, Plaintiff, ANGEL DELEON became sick sore, lame, bruised and disabled, and further received serious permanent and severe injuries in and about diverse parts of his person, including, but not limited to, injuries to his left hand and left index finger. In addition thereto, Plaintiff, ANGEL DELEON, was caused to undergo medical and hospital care and treatment and has undergone, and will in the future require, a long recuperative period in the care and treatment of his injuries. These injuries are claimed to be permanent. In addition, Plaintiff, ANGEL DELEON, will require in the future additional medical care of physicians; hence additional medical and other expenses will be incurred in the future.

99. This action falls within one or more of the exceptions set forth in N.Y. C.P.L.R. § 1602, including N.Y. C.P.L.R. § 1602(7), N.Y. C.P.L.R. § 1602(8), N.Y. C.P.L.R. § 1602(11).

100. Solely by reason of the foregoing Plaintiff, ANGEL DELEON, has been damaged in a sum which exceeds the threshold limits required for federal diversity jurisdiction, and said sum of damages further exceeds the jurisdictional limits of all lower state courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION
Labor Law § 200

101. Plaintiff, ANGEL DELEON, repeats and reiterates each and every allegation of the within Complaint as contained in paragraphs "1" through "95", inclusive, and as contained within paragraphs "96" through "100", inclusive, with the same force and effect as if more fully set out herein at length.

102. Defendants failed to provide reasonable and adequate protection to persons, including Plaintiff, employed at or frequenting the aforementioned premises.

103. Defendants knew of the hazards and dangers inherent in the construction and renovation work to be performed by Plaintiff and other workers employed at the aforementioned premises.

104. Upon reasonable inspection Defendants would have discovered the hazards and dangers inherent in the construction and renovation work to be performed by Plaintiff.

105. Defendants, individually, possessed control and authority over the aforementioned premises and all construction, renovation, and delivery work performed therein in conjunction with said construction.

106. Defendants, individually, possessed control and authority over the aforementioned premises so as to permit them to alter the scope and manner of the construction and renovation work performed by Plaintiff so as to avoid the hazards and dangers that ultimately caused injury to Plaintiff.

107. Defendants, individually, possessed control and authority over the aforementioned premises so as to permit them to alter the scope and manner of the construction and renovation work

performed by Plaintiff so as to correct the unsafe conditions and hazards and dangers that ultimately caused injury to Plaintiff.

108. Defendants, individually, possessed control and authority over the aforementioned premises so as to permit them to alter the scope and manner of the construction and renovation work performed by Plaintiff so as to modify the unsafe conditions and hazards and dangers that ultimately caused injury to Plaintiff.

109. Defendants knew that the aforementioned crane and the methods employed in its use (including the means of communicating with and/or signaling the crane operator) were unsafe and unfit for its intended use.

110. Upon reasonable inspection, Defendants would have discovered that the aforementioned crane and the methods employed in its use (including the means of communicating with and/or signaling the crane operator) were unsafe and unfit for its intended use.

111. Defendants knew that the construction and renovation work which they had contracted to be performed entailed certain dangers and hazards that required the installation and/or use of certain safety precautions so as to provide reasonable protection to those persons performing the work.

112. Upon reasonable inspection, Defendants would have discovered that the construction and renovation work which they had contracted to be performed entailed certain dangers and hazards that required the installation and/or use of certain safety precautions so as to provide reasonable protection to those persons performing the work.

113. In having failed to provide Plaintiff with a safe place to work and in having failed to properly construct, shore, equip, guard, arrange, operate and conduct the area where Plaintiff was

engaged in labor, Defendants are statutorily liable to Plaintiff in having violated the laws, rules and regulations of the State of New York, including, but not limited to, New York State Labor Law § 200 and the Industrial Code of the State of New York; and in other manners, ways and respects, Defendants, herein, their agents, servants, employees and/or contractees were negligent, reckless and careless in the premises.

114. The negligence, recklessness and carelessness of the Defendants herein, their agents, servants and/or employees, in addition to those acts alleged previously herein, consisted of the following: failing to furnish Plaintiff with a safe place to work; in failing and neglecting to furnish Plaintiff with adequate safety devices; failing to properly operate, manage and control the aforesaid crane on said premises; and in other manners, ways and respects, Defendants, herein, their agents, servants and/or employees were negligent, reckless and careless in the premises.

115. Solely by reason of the aforementioned negligence, recklessness, and carelessness of the Defendants, their agents, servants and/or employees, as aforesaid, Plaintiff, ANGEL DELEON became sick sore, lame, bruised and disabled, and further received serious permanent and severe injuries in and about diverse parts of his person, including, but not limited to, injuries to his left hand and left index finger. In addition thereto, Plaintiff, ANGEL DELEON, was caused to undergo medical and hospital care and treatment and has undergone, and will in the future require, a long recuperative period in the care and treatment of his injuries. These injuries are claimed to be permanent. In addition, Plaintiff, ANGEL DELEON, will require in the future additional medical care of physicians; hence additional medical and other expenses will be incurred in the future.

116. This action falls within one or more of the exceptions set forth in N.Y. C.P.L.R. § 1602, including N.Y. C.P.L.R. § 1602(7), N.Y. C.P.L.R. § 1602(8), N.Y. C.P.L.R. § 1602(11).

117. Solely by reason of the foregoing Plaintiff, ANGEL DELEON, has been damaged in a sum which exceeds the threshold limits required for federal diversity jurisdiction, and said sum of damages further exceeds the jurisdictional limits of all lower state courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION
Negligence

118. Plaintiff, ANGEL DELEON, repeats and reiterates each and every allegation of the within Complaint as contained in paragraphs "1" through "95", inclusive, and as contained within paragraphs "96" through "100", inclusive, and as contained within paragraphs "101" through "117", inclusive, with the same force and effect as if more fully set out herein at length.

119. The negligence, recklessness, and carelessness of Defendants, their agents, servants, employees and/or contractees consisted of those failures, omissions, and affirmative acts as aforementioned and also consisted of said parties': failure to remedy the hazards and dangers posed by the aforementioned premises; failure to remedy the hazards and dangers posed by the aforementioned delivery of materials; failure to remedy the hazards and dangers posed by the aforementioned use of a crane to transport hoisted loads; failure to remedy the hazards and dangers posed by the aforementioned crane, hoisted loads, and the aforementioned premises; lack of care and neglect that permitted the aforementioned workplace to become unsafe for the work to be performed by Plaintiff; modification of the aforementioned worksite and/or crane so as to render it unsafe for the work to be performed by Plaintiff; lack of care and neglect that permitted the aforementioned worksite and/or crane to fall into a state of disrepair and/or ruin thereby rendering the crane unsafe for use; modification of the aforementioned worksite and/or crane in such a manner so as to render

the crane unsafe for use; failure to warn Plaintiff of the dangers and hazards inherent in use of the aforementioned crane; failure to warn Plaintiff of the dangers and hazards inherent in use of the aforementioned crane as supplied and/or furnished by Defendants; failure to install and/or provide adequate safeguards to ensure that persons on the premises, such as Plaintiff, would be afforded reasonable and adequate protections in the performance of their labors; failure to seek professional assistance and guidance regarding the renovations, alterations, and construction as aforementioned from a suitable professional, including but not limited to an architect and/or an engineer; and in other manners, ways and respects, Defendants, herein, their agents, servants, employees and/or contractees were negligent, reckless and careless in the premises.

120. Solely by reason of the aforementioned negligence, recklessness, and carelessness of the Defendants, their agents, servants and/or employees, as aforesaid, Plaintiff, ANGEL DELEON became sick sore, lame, bruised and disabled, and further received serious permanent and severe injuries in and about diverse parts of his person, including, but not limited to, injuries to his left hand and left index finger. In addition thereto, Plaintiff, ANGEL DELEON, was caused to undergo medical and hospital care and treatment and has undergone, and will in the future require, a long recuperative period in the care and treatment of his injuries. These injuries are claimed to be permanent. In addition, Plaintiff, ANGEL DELEON, will require in the future additional medical care of physicians; hence additional medical and other expenses will be incurred in the future.

121. This action falls within one or more of the exceptions set forth in N.Y. C.P.L.R. § 1602, including N.Y. C.P.L.R. § 1602(7), N.Y. C.P.L.R. § 1602(8), N.Y. C.P.L.R. § 1602(11).

122. Solely by reason of the foregoing Plaintiff, ANGEL DELEON, has been damaged in a sum which exceeds the threshold limits required for federal diversity jurisdiction, and said sum of

damages further exceeds the jurisdictional limits of all lower state courts which would otherwise have jurisdiction.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AGAINST THE DEFENDANTS:

ON THE FIRST CAUSE OF ACTION IN A SUM WHICH EXCEEDS THE THRESHOLD LIMITS REQUIRED FOR FEDERAL DIVERSITY JURISDICTION AND WHICH ALSO EXCEEDS THE JURISDICTIONAL LIMITS OF ALL LOWER STATE COURTS WHICH WOULD OTHERWISE HAVE JURISDICTION, TOGETHER WITH THE COSTS AND DISBURSEMENTS OF THE WITHIN ACTION;

ON THE SECOND CAUSE OF ACTION IN A SUM WHICH EXCEEDS THE THRESHOLD LIMITS REQUIRED FOR FEDERAL DIVERSITY JURISDICTION AND WHICH ALSO EXCEEDS THE JURISDICTIONAL LIMITS OF ALL LOWER STATE COURTS WHICH WOULD OTHERWISE HAVE JURISDICTION, TOGETHER WITH THE COSTS AND DISBURSEMENTS OF THE WITHIN ACTION;

ON THE THIRD CAUSE OF ACTION IN A SUM WHICH EXCEEDS THE THRESHOLD LIMITS REQUIRED FOR FEDERAL DIVERSITY JURISDICTION AND WHICH ALSO EXCEEDS THE JURISDICTIONAL LIMITS OF ALL LOWER STATE COURTS WHICH WOULD OTHERWISE HAVE JURISDICTION, TOGETHER WITH THE COSTS AND DISBURSEMENTS OF THE WITHIN ACTION; AND,

ON THE FOURTH CAUSE OF ACTION IN A SUM WHICH EXCEEDS THE THRESHOLD LIMITS REQUIRED FOR FEDERAL DIVERSITY JURISDICTION AND WHICH ALSO EXCEEDS THE JURISDICTIONAL LIMITS OF ALL LOWER STATE COURTS WHICH WOULD OTHERWISE HAVE JURISDICTION, TOGETHER WITH THE COSTS AND DISBURSEMENTS OF THE WITHIN ACTION.

Dated: New York, New York
March 31, 2006

GERSOWITZ, LIBO & KOREK, P.C.

ANDREW L. LIBO
Attorneys for Plaintiff, ANGEL DELEON
111 Broadway, 12th Floor
New York, New York 10006
Tel: 212-385-4410

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

--X

ANGEL DELEON,

Plaintiff,

-against-

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC., and RIGGED RITE INC.,

Defendants.

--X

INDEX NO.:

ATTORNEY'S VERIFICATION

ANDREW L. LIBO, an attorney duly admitted to practice law in the State of New York, makes the following affirmation under the penalty of perjury:

I am of the firm of GERSOWITZ, LIBO & KOREK, P.C., the attorneys of record for the plaintiff.

I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters, I believe them to be true.

This verification is made by affirmant and not by plaintiffs because plaintiffs are not in the County of New York, which is the County where your affirmant maintains offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are correspondence had with the said plaintiff, information contained in the said plaintiff's file, which is in affirmant's possession, and other pertinent data relating thereto.

Dated: New York, New York
April 3, 2006

ANDREW L. LIBO

Index No. 13662/2006 Year 20

SUPREME COURT OF THE STATE OF BRONX
COUNTY OF BRONX

ANGEL DELEON,

Plaintiff,

-against-

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC., and RIGGED RITE INC.,

Defendants.

SUMMONS & VERIFIED COMPLAINT

GERSOWITZ LIBO & KOREK, P.C.
Attorneys for Plaintiffs

Office and Post Office Address-Telephone
111 BROADWAY - 12TH FLOOR
NEW YORK, N.Y. 10006
(212) 385-4416

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

NOTICE OF ENTRY

Sir: Please take notice that the within is a *(certified)* true copy of a duly entered in the office of the clerk of the within named court on 20

Dated,

Yours, etc.,
GERSOWITZ LIBO & KOREK, P.C.
Attorneys for

Office and Post Office Address
111 BROADWAY - 12TH FLOOR
NEW YORK. N.Y. 10022

To
Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 20
at M.
Dated,

Yours, etc.,
GERSOWITZ LIBO & KOREK, P.C.
Attorneys for

Office and Post Office Address
111 BROADWAY - 12TH FLOOR
NEW YORK. N.Y. 10022

To
Attorney(s) for

40985

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA20

ANGEL DELEON,
Plaintiff,

Index No. 13662/06

DECISION/ORDER

- against -

Present:
HON. KENNETH L. THOMPSON, Jr.

R.D. RICE CONSTRUCTION, INC., et al.,
Defendants.

R.D. RICE CONSTRUCTION, INC.,
Third-Party Plaintiff,

Index No. 85769/07

-- against -

CARVART ARCHITECTURAL GLA, et al.,
Third-Party Defendants.

The following papers numbered 1 to ___ read on this motion, ______________

No On Calendar of	PAPERS NUMBERED
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed	1-2, 3-4
Answering Affidavit and Exhibits	5
Replying Affidavit and Exhibits	6
Affidavit	
Pleadings -- Exhibit	
Stipulation -- Referee's Report --Minutes	
Filed papers	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR § 603 for an order severing the third-party action from the main action, on the ground that the third-party claim involves insurance issues and will prejudice movant, is granted.

Upon receipt of this order with notice of entry, the Clerk shall sever the above action and schedule a preliminary conference in both actions.

The foregoing shall constitute the decision and order of this Court.

Dated: JUN 22 2007

J.S.C.

JUN 28 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
---X Index No. 13662/06

ANGEL DELEON,

Plaintiff,

- against -

RESPONSE TO DEMAND FOR AD DAMNUM

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC. and RIGGED RITE INC.,

Defendants.

---X

COUNSELORS:

Plaintiff, by his attorneys, GERSOWITZ, LIBO & KOREK, P.C., in response to Defendants EMPIRE ERECTORS AND ELECTRICAL CO., INC.'S Demand for Ad Damnum, dated July 26, 2006, sets forth the following:

Plaintiff demands judgment against the defendants on the First Cause of Action in the sum of TWO MILLION ($2,000,000.00) DOLLARS and on the Second Cause of Action in the sum of TWO MILLION ($2,000,000.00) DOLLARS.

Dated: New York, New York
August 4, 2006

Yours, etc.,

ANDREW L. LIBO
GERSOWITZ, LIBO & KOREK, P.C.
Attorneys for Plaintiff
111 Broadway, 12th Floor
New York, New York 10006
(212) 385-4410

TO:

GOLDBERG & ASSOCIATES
Attorneys for Defendants
THE PADDED WAGON, INC. and RIGGED RITE, INC.
39 Broadway, 17th Floor
New York, New York 10006
(212) 968-2300

McMAHON, MARTINE & GALLAGHER
Attorneys for Defendant
R.D. RICE CONSTRUCTION, INC.
90 Broad Street, 14th Floor
New York, New York 10004
(212) 747-1230

Index No. 13662/2006 Year 20

SUPREME COURT OF THE STATE OF BRONX
COUNTY OF BRONX

ANGEL DELEON,

Plaintiff,

-against-

R.D. RICE CONSTRUCTION, INC.,
EMPIRE ERECTORS AND ELECTRICAL CO., INC,.
THE PADDED WAGON, INC. and RIGGED RITE INC.,

Defendants.

RESPONSE TO DEMAND FOR AD DAMNUM

GERSOWITZ LIBO & KOREK, P.C.
Attorneys for Plaintiff
Office and Post Office Address-Telephone
111 BROADWAY - 12TH FLOOR
NEW YORK, N.Y. 10006
(212) 385-4410

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated,

Attorney(s) for

NOTICE OF ENTRY

Sir: Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 20

Dated,

Yours, etc.,
GERSOWITZ LIBO & KOREK, P.C.
Attorneys for

Office and Post Office Address
111 BROADWAY - 12TH FLOOR
NEW YORK. N.Y. 10022

To

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 20
at M.
Dated,

Yours, etc.,
GERSOWITZ LIBO & KOREK, P.C.
Attorneys for

Office and Post Office Address
111 BROADWAY - 12TH FLOOR
NEW YORK. N.Y. 10022

To

Received by [illegible] 8/9/06 in Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 13662/06

ANGEL DELEON,

Plaintiff,

- against -

VERIFIED
BILL OF PARTICULARS

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC. and RIGGED RITE INC.,

Defendants.

COUNSELORS:

PLEASE TAKE NOTICE, that the plaintiff, as and for a Bill of Particulars, responsive to the demand of defendants **THE PADDED WAGON, INC. and RIGGED RITE, INC.**, respectfully shows to this Court and alleges, upon information and belief, as follows:

1. Plaintiff was born on 5/18/62.

The residence of the plaintiff is 720 Mother Gaston Avenue, Apt. 5C, Brooklyn, New York 11212.

2. The occurrence took place February 9th, 2006, at approximately 4:15 P.M.

3. The occurrence took place on the 4th floor of premises 521 West 23rd Street, New York, New York.

Exact distances calls for information which is evidentiary in nature and is therefore an improper demand for a Bill of Particulars.

4. That the aforesaid occurrence was due solely by reason of the

carelessness, recklessness and negligence of the defendants and defendants' respective agents, servants, licensees, contractors, subcontractors, employees and other affiliates, agencies and departments and those acting under its direction, behest, permission and control, in their operation, management, maintenance, design, creation, contracting, sub-contracting, construction, reconstruction, demolition, decommissioning, supervision and control of the aforesaid premises, in failing to provide the plaintiff with an adequately safe place to work; in owning, operating, managing, maintaining and controlling a crane that was broken, defective, loose, not stable, not properly placed and secured, resulting in glass that was being moved by said crane falling and striking the plaintiff; in failing and neglecting to properly operate said crane; in failing to make the proper and necessary inspections thereat, so as to ascertain the dangerous and hazardous condition of said crane; in that defendants knew or should have known that said crane, in its aforedescribed condition, could and would, result in the occurrence herein; in failing to give the plaintiff any warning of the dangers to be encountered; in maintaining a dangerous and hazardous construction site; in failing to foresee the existence of a hazard from the condition of said crane; in causing a dangerous and hazardous condition and a trap for the unaware, and plaintiff in particular; in failing to provide plaintiff with proper safety devices and protective gear; in creating a nuisance; in failing to eliminate a clear and present danger to life and health; in failing to remedy the hazards and dangers posed by the aforementioned use of a crane to transport hoisted loads; in maintaining a dangerous and hazardous construction site for all personnel therein, and more particularly the plaintiff herein; in violating those construction code ordinances, rules and regulations in such cases made and provided for; in failing and neglecting to use the customs and usage commonly employed in the trade; in failing to provide competent and adequate spotters to assist the crane operator in hoisting the load in question; in failing to provide adequate personnel to assist the crane operator in hoisting the load of said crane; in employing unskilled and incompetent agents, servants and/or employees to operate said crane; in employing unskilled and incompetent agents, servants and/or employees to manage, maintain, operate and control the construction site thereat; in failing to seek professional assistance and guidance regarding the renovations, alternations and construction being performed thereat, from a knowledgeable professional, including but not limited to an architect and/or engineer; in violating provisions of the Labor Law of the State of New York, including §§ 200, 240 and 241 thereof, Rule 23 of The Industrial Code of the State of New York, and 2 R.C.N.Y. §3-02(j)(16)(viii) & § 3-02(j)(20)(i), 23 N.Y.C.R.R. 8.1(f)(2)(i) & 8.1(f)(5), 12 N.Y.C.R.R. §§23-1.7(b)1(i), 12 N.Y.C.R.R. 23.-1.7(e)(1) and (2), and in violating the Administrative Code of the State of New York, 27 N.Y.C. Admin. Code R.S.19, §22.2.1, & 27 N.Y.C. Admin. Code R.S. 19, §22.2.2, rules of the Board of Standards and Appeals, and the rules of the Occupational Safety and Health Administration as they pertain to construction.

5. Both actual and constructive notice are claimed.

(a) Actual notice is claimed in that the defendants knew of said condition(s), was present and/or had agents, servants and/or employees present to observe and correct said condition(s), but failed to do so, the particulars of which are in the exclusive possession of defendants and will be provided following completion of discovery.

(b) Constructive notice is claimed in that the condition(s) existed for such a prolonged period of time prior to this occurrence, that the defendants, and/or defendant's agents, servants and/or employees, knew or should have known of its existence.

6. Plaintiff has sustained the following personal injuries:

AMPUTATION OF DISTAL TIP OF LEFT INDEX FINGER;
Active bleeding at wound site;
Pain radiating up the entire left arm and throughout entire left hand;

Plaintiff required to undergo surgery to the left index finger on 2/16/06, wherein the following was performed;

COMPLETION AMPUTATION OF LEFT INDEX FINGER;

Permanent scar of left hand at site of index finger amputation;
Feelings of inadequacy, embarrassment, self-consciousness;
Permanent loss of power, strength, grasp, grip and dexterity of the left hand;
Permanent severe disfigurement and deformity of left hand;
Permanent disability and restricted use, motion and function of the left hand;
Plaintiff may require additional future surgery to left hand.

All with pain, tenderness, stiffness, soreness, spasm, swelling, weakness, limitation of motion, restriction of use, impairment of function, exacerbation of pain on motion, with damage to the underlying muscles, tendons, ligaments, fascia, blood vessels, capillaries and nerves in and about all of the above injury sites, with resultant disfigurement, deformity and disability.

The aforementioned injuries resulted in shock to the body and nervous system, produced functional and organic disturbances, sympathetic and radiating to and about the adjacent and surrounding areas, as well as tissue damages.

Mental and emotional overlay as a result of the trauma and the aforesaid injuries, accompanied by anxiety, irritability, depression, aggravation and associated and concomitant impairment and negative effects on plaintiff's preaccident enjoyment of life, day to day existence, activities, function and involvements.

The injuries, manifestations and sequelae are permanent, chronic and progressive in nature and that as a result thereof, plaintiff will have permanent pain, tenderness, stiffness, soreness, irritation, discomfort, limitation of motion, limitation and loss of function, power and use and additionally, with advancing years there will be naturally and medically related complications and exacerbations.

As a result, plaintiff's quality of life has been severely compromised. Plaintiff cannot return to nor is it expected that plaintiff will ever be able to return to, a level of function consistent with plaintiff's abilities prior to the accident, and plaintiff has and will continue to sustain impairment, impediment, diminution and retardation of enjoyment of life.

Upon information and belief, all of the aforementioned injuries are permanent and lasting in their nature and character, except those of a superficial nature.

7. Not applicable.

8. (a) Not applicable.

(b) It is impossible to state with reasonable certainty an exact division of time that plaintiff was actually confined to bed alone, except to state that there were periods of bed confinement, particularly during the time set forth in paragraph "8 (c)".

(c) Plaintiff was confined to home, except for necessary visits for medical aid and attention from February 9, 2006 to approximately March 2, 2006, and continuing intermittently and periodically thereafter.

(d) Not applicable.

(e) Plaintiff received emergency hospital treatment at Bellevue Hospital Center, 462 First Avenue, New York, New York, on 2/9/06.

Plaintiff underwent ambulatory surgery at Bellevue Hospital Center, 462 First Avenue, New York, New York, on 2/17/06.

9. Plaintiff was employed as a Glazier Mechanic.

Plaintiff earned approximately $1,000.00 per week.

10. Plaintiff was employed by RG Glass Creations, a/k/a Carvart Glass Inc., 76

VanDyke Street, Brooklyn, New York 11231.

Plaintiff was incapacitated from employment from February 9, 2006 to approximately March 2, 2006.

11. If totally disabled is defined as being physically unable to perform any activities whatsoever, then plaintiff was not totally disabled.

Plaintiff is permanent partially disabled from 2/9/06 to date.

12. No such determination to date.

13. Set forth in paragraph "10".

14. The social security number of the plaintiff is 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.

15. Not applicable.

16. Plaintiff's employer set forth in paragraph "10".

17. Plaintiff was not self-employed.

18. Plaintiff incurred the following special damages to date:

[a] Physicians services - approximately $10,000.00

[b] Medical supplies - approximately $100.00

[c] Lost earnings - approximately $3,000.00

[d] X-ray expenses - included in "[a]"

[e] Lab work - included in "[f]"

[f] Hospital expenses - approximately $8,000.00

[g] Nurses services - not applicable

[h] Prescription medicines - approximately $100.00

[i] Property damage - not applicable

[j] Other expenses - none

19. Plaintiff was not treated by any physician for an injury to the left index finger for a period of five (5) years prior to this occurrence. Plaintiff was treated by the following physicians for the injuries sustained in this occurrence: Sunset Medical Care, P.C., 185 Marcy Avenue, Brooklyn, New York; Dr. Eial Faierman, 37-47 77th Street, Jackson Heights, New York 11372.

20. Defendants violated provisions of the Labor Law of the State of New York, including §§ 200, 240 and 241 thereof, Rule 23 of The Industrial Code of the State of New York, and 2 R.C.N.Y. §3-02(j)(16)(viii) & § 3-02(j)(20)(i), 23 N.Y.C.R.R. 8.1(f)(2)(i) & 8.1(f)(5), 12 N.Y.C.R.R. §§23-1.7(b)1(i), 12 N.Y.C.R.R. 23.-1.7(e)(1) and (2), and in violating the Administrative Code of the State of New York, 27 N.Y.C. Admin. Code R.S.19, §22.2.1, & 27 N.Y.C. Admin. Code R.S. 19, §22.2.2, rules of the Board of Standards and Appeals, and the rules of the Occupational Safety and Health Administration as they pertain to construction and it will respectfully be left to the trial court to take judicial notice of all additional laws, statutes, ordinances, regulations and/or rules that are claimed the defendant(s) violated, and instruct the jury accordingly.

21. Improper demand in a Bill of Particulars, more appropriate in Discovery, and set forth therein.

22. Improper demand in a Bill of Particulars, more appropriate in Discovery, and set forth therein.

23. Not applicable.

24. The dangerous and defective condition(s) was the construction site thereat and the subject crane that was in use at the time of the occurrence, in that same resulted in glass falling from the crane and striking the plaintiff.

PLEASE TAKE NOTICE, that plaintiff expressly reserves the right to supplement and/or amend the within Bill of Particulars as to injuries and/or damages claimed herein up to and including the time of trial of this action.

Dated: New York, New York
August 8, 2006

Yours, etc.,

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TO:

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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ANDREW L. LIBO, an attorney duly admitted to practice in the Courts of the State of New York, states:

I am a member of the firm of **Gersowitz, Libo & Korek, P.C.**, attorneys of record for plaintiff in the within action. I have read the foregoing ***Bill of Particulars*** and know the contents thereof; the same is true to my own knowledge except as to those matters therein alleged to be on information and belief and, as to those matters, I believe them to be true.

The reason this verification is made by me and not by plaintiff is that the residence of plaintiff is outside the County wherein your deponent maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are information, books, records, data and correspondence contained in deponent's file and conversations had with the plaintiff herein.

I affirm that the foregoing statements are true under the penalty of perjury.

Dated: August 8, 2006

ANDREW L. LIBO

CERTIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ANDREW L. LIBO, an attorney duly admitted to practice in the Courts of the State of New York, states:

I am a member of the firm of **GERSOWITZ, LIBO & KOREK, P.C.**, attorneys of record for plaintiff in the within action. I hereby certify, pursuant to 22 NYCRR 130-1.1(a) and after forming an inquiry reasonable under the circumstances, that the within ***VERIFIED BILL OF PARTICULARS,*** and their respective contentions, are not frivolous as set forth in and defined by 22 NYCRR 130-1.1(a).

Dated: August 8, 2006

ANDREW L. LIBO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

---X

ANGEL DELEON,

Plaintiff,

- against -

R.D. RICE CONSTRUCTION, INC., EMPIRE ERECTORS AND ELECTRICAL CO., INC., THE PADDED WAGON, INC., and RIGGED RITE, INC.,

Defendants.

---X

Index No.: 13662/06

CONSENT TO REMOVAL

The attorneys of record for all defendants herein hereby consent and join in the prospective removal of the above-captioned action from Supreme Court of the State of New York, (Bronx County), where it is currently pending under Index Number 13662/06, to federal court.

Dated: March 7, 2008

MCMAHON MARTINE & GALLAGHER, LLP
Attorneys for Defendant R.D. RICE CONSTRUCTION, INC.
By:______________________
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Dated: March 7, 2008

GOLDBERG & ASSOCIATES
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Dated: March 7, 2008

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